

THE ALIENIST AND EXPERT TESTIMONY*

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The lack of understanding by the general public about insanity increases the problem of the alienist. To be sure, this ignorance is no greater than about most other obscure diseases. There is this difference, the average man appreciates somewhat his ignorance about diseases in general, but not so as regards insanity. Most persons believe they "can tell a crazy man when they see one"; whereas, in point of fact, their train of reasoning about mental sickness is almost as illogical as that of the patient about other matters. For example, it is generally believed that insane persons possess unusually crafty intelligence. Yet, paradoxically, any sign of intelligence on the part of an accused criminal at the time of his trial is regarded as evidence of mental soundness by many laymen.

Little wonder, then, that trial by jury to determine an individual's mental status is likely to be "something of a joke." Indeed, the results of our archaic method of permitting lay juries to pass judgment on questions of insanity is often a travesty of justice.

A few months ago the peculiar behavior of a certain criminal in the Los Angeles County Jail suggested the probability that he was insane. He was, therefore, sent to the psychopathic ward for observation and in due course came before the insanity commission and was pronounced insane.

The prisoner himself did not accept this verdict, however. Like most insane persons, he believed himself to be mentally sound, and demanded a jury trial. And as this demand cannot be denied in such cases in California, regardless of the findings of the lunacy board, this man was brought to trial before a jury in another court for the purpose of determining his mental condition.

At this trial a number of disinterested observers, as well as the members of the lunacy commission, testified that the man was insane. There was practically no evidence to the contrary presented, except the reiterations of the patient himself. Yet the jury promptly pronounced the man sane, and he was held for trial on the criminal charge.

At this second trial his guilt was proven conclusively and he was duly convicted. But the peculiar indifference of the man during the trial and something in his actions, together with the fact that the lunacy commission had judged him insane previously, led the court officials to believe that the prisoner belonged in an asylum rather than a prison. So he was again placed on trial to determine his sanity.

Again the same witnesses who had testified at

his previous insanity trial gave the same testimony about his abnormal mental condition. But with a very different result. For this third jury declared the man insane.

Thus by the circuitous route of passing through four different courts in three separate trials, this insane man finally arrived at precisely the same goal that was suggested by the lunacy commission originally. The total expense involved in this original insanity trial was about twenty-five dollars. The expense of the three intervening trials totaled several hundred dollars.

Another case that came before the court of Los Angeles County shortly after this one, was that of a man accused of a minor crime. In this case, as in the other, the lunacy commission pronounced the man insane, and the patient at once demanded a jury trial. At this trial six physicians testified to the man's insanity, four of these physicians being men specially trained in observing mental cases. Indeed, the only witness for the defense was the wife of the prisoner, who stated the hesitating belief that her husband was not insane. None of the doctors in this case received any remuneration, or expected to, so that there could be no question as to the sincerity of their belief. Yet in the face of this overwhelming testimony, the jury promptly decided that the man was not insane. He was therefore brought to trial on the criminal charge, convicted, and sent to prison. But after a few weeks of prison life he showed such unmistakable signs of insanity that he was transferred to a State hospital for the insane, and is still an inmate of that institution.

The number of similar cases that could be cited, confining our observations merely to our own courts, would fill volumes. Indeed, they do fill volume after volume of our court records, and represent thousands upon thousands of dollars in expenditures that might easily be avoided by a simple and wholly reasonable change in our process of legislation. And apparently this is fully appreciated by every one connected with the administration of the law; yet nothing definite is done about it. In fact, this curious credulity and ignorance about insanity is frequently taken advantage of by lawyers to pervert justice, as illustrated in the following case:

A certain woman client of a reputable attorney conceived the idea that he had defrauded her. And since she could not convince the authorities that such was the case, she took the matter into her own hands in characteristic paranoid fashion, by discharging a revolver. This landed her in the psychopathic ward, where she was pronounced insane by the insanity commission. But, true to form, she demanded a jury trial.

The new attorney she employed, being wise to the ways of juries, and having had considerable experience with insanity cases, was not fully convinced of the woman's mental soundness, and therefore consulted an alienist. Curiously enough, this alienist, although highly trained in his specialty, still retained a modicum of common sense—a thing that all specialists are popularly believed to

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lose in the process of acquiring their knowledge. He assured the attorney that his client was insane.

"But," said the alienist, "you will have no difficulty in winning your case. Regardless of what the lunacy commission and the judge may have thought or may think, the jury will be guided in its opinion by the appearance and actions of the woman herself. Put her on the witness stand and let her talk as much as she pleases and rest assured that the jury will call her sane."

That was precisely what the attorney did. And despite the fact that the physicians of the lunacy commission testified that the woman was insane, and in addition, two judges of the superior court who were placed on the witness stand expressed the same opinion, the jury declared her mentally sound and she was given her liberty—a menace to her community and to herself.

It has been asserted repeatedly that "important murder trials are conducted by the newspapers." Technically this statement is untrue, of course. But it is true that newspaper representatives search out evidence, and express opinions, play up every incident, put on special writers, and make capital and copy for the benefit of the maudlin and morbid.

Furthermore, some newspapers make their own diagnosis of the accused person's mental condition regardless of medical evidence, and naturally this colors the text of the matter they print. Whether intentionally or otherwise, they become partisans.

Since the opinions of most persons, including jurors, are based upon newspaper statements, this influence cannot fail to insinuate itself into the jury rooms. Thus in a measure, at least, criminal cases are influenced by a partisan press.

An evening newspaper in Los Angeles, during a notorious murder trial, printed an editorial which began with this statement:

"The rapidity with which the defense of insanity is undermining the administration of American law suggests a lack at least of moral responsibility on the part of persons other than those under indictment for crime." The implication of the paragraph and, indeed, the entire editorial, is that the plea of insanity is simply a "dodge" to defeat the ends of justice.

It so happened that on the very day upon which this editorial appeared, a certain American officer, bearing the congressional medal for bravery, and famous for the terse retort given in answer to a German demand to surrender, disappeared from a ship at sea. This man, to the casual observation of his immediate friends at least, had shown nothing that would indicate a tendency toward mental aberration. And yet it now appears that he deliberately planned and accomplished self-destruction. There seems to be only one explanation—mental unbalance. And, now that the deed is done, the lay world is ready to accept such an explanation, and shake its pious head dolefully over the misfortune.

But supposing this same "mysterious malady" had manifested itself in the case of this brave American officer as a homicidal instead of a suicidal impulse?—a thing quite consistent with in-

sanity. Then, instead of sorrowful and sympathetic comment, we should have the usual torrent of newspaper condemnation and malediction against the man and the deed, and against any alienist who ventured to explain the act on the ground of insanity.

Or had any one suggested, even a few days before the tragedy, that there was anything abnormal about this man's mentality, the newspapers would have fairly oozed recriminations. Yet I venture to think that any trained alienist would have detected some signs of mental instability.

The existing method of taking medical evidence in murder cases where the sanity of the accused is in question is unscientific and partisan, and tends to discredit the medical profession. Also this method frequently fails properly to serve the ends of justice.

At present the medical experts are employed either by the prosecution or the defense, thus in the very beginning tending to make the whole procedure from the examination of the patient to testimony before the jury, a partisan affair rather than an impartial, scientific attempt to arrive at a correct diagnosis.

The physician finds it difficult when making his examination to obtain the actual facts about the history of the patient, or his heredity, as at present he is furnished only such items as partisan representatives of the law choose to give him. As a result, he is likely to reach erroneous conclusions, although they may be honest ones and entirely justified by the evidence presented.

Wherefore, the statement of the expert witness before the court represents a biased opinion. And this opinion is still further distorted by the cross-examination which does not attempt to bring out actual facts, but is simply a system of cross-heckling in which the wits, partisanship and integrity of the physician are at stake, rather than his actual opinion about the patient or his qualification for giving such an opinion. In short, the procedure is not an honest attempt to determine the physician's opinion, but simply an attempt to discredit it.

It follows naturally that under present conditions the alienist is likely to be suspected of mercenary motives in giving his testimony. And this cannot fail to have a certain influence upon the jury.

The sole function of the physician is to determine whether or not the accused is suffering from disease. He is not concerned with the question of guilt or punishment. But the practical effect of existing methods is to force the physician to share the legal responsibility as to the punishment of the defendant.

Another deplorable thing is the lack of any standard of qualification in the matter of expert witnesses in insanity cases. In effect the law does not regard insanity as a disease in the same sense as it does other pathological conditions. For example, in the case of such relatively easily diagnosed diseases as pneumonia, syphilis, tuberculosis, or malaria, the positive opinion of one physician outweighs the contrary opinion of any number of lay observers. In such cases, the statement of the

village cobbler, blacksmith, carpenter, or constable, that they did not believe a certain person had tuberculosis or syphilis, would have no weight as evidence against the positive statement to the contrary by a competent physician.

Such is not the case in deciding the much more difficult problem about the obscure disease, insanity. In such cases any person may express his opinion and the very bulk of testimony often carries great weight with the jury.

No one will question that our present methods of conducting trials in which the sanity of the defendant is in question are archaic. And yet the remedy is a simple one, easily applied. This remedy has been suggested repeatedly by legal, medical and lay organizations and, with minor modifications, is regarded as the sensible, logical thing to do the country over. In effect it is this: In cases of suspected insanity, criminal or otherwise, the actual condition of the patient is to be determined, not by a jury of laymen, but by a commission of trained observers who are competent to judge in such matters and who are appointed by a judge to determine the one point as to whether or not the patient is insane. The physicians would receive the same remuneration, whatever their decision, so there could be no question about their opinions being influenced by a monetary consideration.

Apparently there is no question that some such arrangement would be more just, and would serve the ends of justice better, than the present system of deciding these matters through the medium of lay juries. And yet, in certain states where repeated attempts have been made to put some such law into effect, it has never been possible to carry it out.

Why? There seem to be four very explicit reasons why such a law always gets clogged and sidetracked in the legislative machinery and fails to get through. These four reasons are as follows:

1. The opposition of certain influential criminal lawyers who would be deprived of an opportunity to show their skill and oratory if such a law were passed;
2. The sensational physician, who is in effect a professional witness, and who would lose the glamour and publicity of a court trial if his statements were confined to an unobtrusive report, confided to a judge;
3. A certain class of judges in the criminal courts who glory in the publicity given by the newspapers in public trials; and
4. The general indifference of the public at large to anything that concerns insanity, except on those sporadic occasions when insanity is the defense in some notorious trial.

These influences, strange as it may seem to the ordinary observer, have been sufficient to defeat the necessary legislative action. And the outlook for the future seems just as uncertain now as it was thirty or forty years ago when these matters were first proposed and accepted by the majority of intelligent thinkers.

GONORRHEA IN WOMEN *

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The object of this paper is to re-emphasize the most neglected of all gynecological conditions. Gonorrhea is the fundamental cause of much misery and suffering, loss of time on the part of the patient, sterility, and blindness of the newborn.

Chalfant (Jour. A. M. A., June 3, 1922) discusses some gynecological misdemeanors. Perhaps he considered the neglect of gonorrhea a felony and thus eliminated it from his misdemeanors. Too often pus tubes are removed and a gonococcus pus discharging urethra left untreated. Can it be that some surgeons, in their enthusiasm to remove the pathologic tubes, overlook the importance of the urethritis and allow the patient to continue on her journey, infecting others and spreading the disease?

A woman suffering from smallpox or diphtheria is isolated; but with a gonorrheal discharge she is allowed to remain free to spread infection.

The woman practicing prostitution constitutes an endless chain of infection against which little or no attempt is made to protect the public. A mistaken chivalry shields the woman in most instances and a corrupt or indifferent political condition fails in the discharge of an important duty.

Physicians have made many advances in the prevention and cure of disease, but progress in treating gonorrheal conditions is at a standstill. The general treatment is practically the same as it was fifty years ago. The germicides of that period are still used, and the failure of that period still exists. Occasionally a new drug, such as mercurachrome or acriflavine, is put forward, but after an honest trial, it falls into the same category as silver nitrate, sulphate of zinc, bichloride of mercury, and potassium permanganate. Slow progress in treating gonorrhea in women is in part due to the fact that the profession rarely sees the patient in the acute stage.

The man with a slight urethral discharge usually consults a physician immediately, but the woman seldom comes under our observation until the disease has spread to the cervix, the body of the uterus, and sometimes the tubes. A slight urethral discharge with burning on micturition does not worry the female, while the male considers these symptoms worthy of medical attention.

The patients seen in both private and in clinical practice are usually the advanced cases with the glands of Bartholin, Skene's glands, the cervix, and often the tubes involved. It is in these cases that a felony is committed by some surgeons in removing the interabdominal condition and leaving the disease in the vulvo-vaginal tract. To cure the patient, the glands of Bartholin should always be excised, Skene's glands should be opened and cauterized, not with drugs, but with the thermocautery, and the urethra should be injected with a strong silver nitrate solution. The cervix should

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